

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA
FOR A CASE PENDING IN

THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
TIMOTHY E. OSBORNE,

Plaintiff,

Civil Action No.: 2:0-7 CV 7
(Judge Keeley)

v.

ASPLUNDH TREE EXPERT COMPANY,
A Pennsylvania corporation,

Defendant.

TO: Independence Blue Cross Personal Care
1901 Market Street
Philadelphia, PA 19103

YOU ARE HEREBY COMMANDED [mark all that apply]

___ to appear in the United States District Court at the place, date and time specified to

___ to testify in the taking of a deposition as a material witness in the above-styled case at a place and time to be set by agreement of the parties; or

___ testify in a hearing in the above-styled case; or

___ testify in the trial of the above-styled case.

☒ to produce and permit inspection of and copying of designated books, documents or tangible things in your possession, custody or control, as follows:

1. Any bills related to treatment or care received by Tabitha R. Osborne from March 1, 2006 through May 30, 2006;
2. Any records related to treatment or care received by Tabitha R. Osborne from March 1, 2006 through May 30, 2006;
3. Any medical records related to treatment or care received by Tabitha R. Osborne from March 1, 2006 through May 30, 2006.

Please provide copies of the requested documents to:

Steptoe & Johnson PLLC, PO Box 1616, Morgantown, WV 26507-1616 no later than February 6, 2009.

Issued by: Christi R. B. Steptoe, Esquire (WV State Bar #10376)
Steptoe & Johnson PLLC
P. O. Box 1616
Morgantown, WV 26507-1616
Telephone (304) 598-8000

Title: Attorney for Defendant

Signature: Christi R. B. Steptoe

Date Issued: 1/27/09
5064735

EXHIBIT

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Proof of Service

Served Tracy Palmer Blue Cross	Date 1/29/09 2:45	Place 1901 Market St Phila, PA 19103
Served On (Print Name) 1-215-241-4340 Barbara Smith - legal Dept	Manner of Service IN HAND	
Served By (Print Name) Tom Fredericks	Title Process Server	

Declaration of Server

I declare under penalty of perjury under the laws of the State of West Virginia that the foregoing information contained in the Proof of Service is true and correct.

Executed on

1/29/09


 Signature of Server

~~Fredericks & Palmer Process Serving, LLC~~
~~Address of Server~~
~~501 Scarborough Dr. Suite 306 East~~
~~English Creek Executive Center~~
~~Egg Harbor Twp., NJ 08234~~



1085 Van Voorhis Road, Suite 400

Writer's Contact Information

P.O. Box 1616

(304) 598-8162

Morgantown, WV 26507-1616

Christi.Stover@step toe-johnson.com

(304) 598-8000 (304) 598-8116 Fax

www.step toe-johnson.com

January 30, 2009

Jacqueline L. Sikora, Esquire
Gianola Barnum & Wigal LC
1714 Mileground Road
Morgantown, WV 26505

Re: *Timothy E. Osborne v. Asplundh Tree Expert Company*
Civil Action No. 2:07-CV7

Dear Jackie:

The enclosed subpoena was served on January 29, 2009 and the documents subject to the subpoena relate to the medical care received by Plaintiff's spouse, Tabitha Osbornè, at or around the time of Plaintiff's separation from Asplundh. As you are aware, the Defendant believes that information subject to this request is relevant to Plaintiff's claims and Asplundh's defenses.

We understand that there is the possibility that you may object, or move to quash the attached subpoena. In lieu of involving the Court, we would be happy to agree to keep any documents received pursuant to the subpoena sealed until such time as we can meet at an agreed location to jointly review the records. At such meeting, copies of any documents received can be provided to you.

We hope that you will agree to such an arrangement to avoid the cost and delay of involving the Court, especially in light of pending discovery deadlines.

Best regards,

A handwritten signature in black ink, appearing to read 'Christi R. B. Stover'.

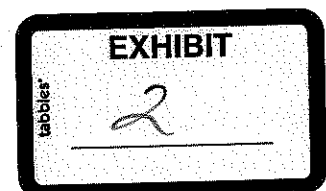
Christi R. B. Stover

CRBS/akh

Enclosure

cc (w/encl): Gary Wigal, Esquire
Larry Rector, Esquire

5063693





1085 Van Voorhis Road, Suite 400

Writer's Contact Information

P.O. Box 1616

(304) 598-8162

Morgantown, WV 26507-1616

Christi.Stover@steptoe-johnson.com

(304) 598-8000 (304) 598-8116 Fax

www.steptoe-johnson.com

December 31, 2008

Via Fax and E-Mail

Jacqueline L. Sikora, Esquire
Gianola Barnum & Wigal LC
1714 Mileground Road
Morgantown, WV 26505

Re: *Timothy E. Osborne v. Asplundh Tree Expert Company*
Civil Action No. 2:07-CV7

Dear Jackie:

Enclosed please find "Defendant's Second Set of Requests for Production to Plaintiff" and "Defendant's Second Set of Interrogatories to Plaintiff."

As you will note, in addition to requests regarding Plaintiff's business, Pro-V Tree, there are requests related to Mrs. Osborne's health and medical treatments received from March 1, 2006 through June 30, 2006. As we have discussed on prior occasions, the Defendant believes that Mrs. Osborne's health and/or treatments she received during the above-referenced time frame are relevant to the issues in this case due to the fact that several Asplundh witnesses recollect that Plaintiff had requested time off to purportedly care for his wife in the spring of 2006. Based on our conversations, it initially appeared that Mrs. Osborne's records would be voluntarily produced, since the Defendant was willing to narrow its request to a limited time frame. However, it has become apparent that the information will not be provided. In order to formalize our request, discovery directed at this issue is attached.

In addition to information regarding Mrs. Osborne, pharmacy records for the Osborne family have also become relevant to the issues in this case. As you will recall, Plaintiff testified in his deposition that he only learned of the change in his employment status with the Defendant when his prescription benefits card was denied at the pharmacy as he was picking up a prescription for his children. During depositions held in this matter earlier in December, you indicated that you would agree to produce the pharmacy records of the Plaintiff and his family, and were in the process of obtaining the same through releases executed by your client and/or his family. In order to protect the interests of our client, a request related to these records has been propounded to formalize your client's duty to produce those records.

In light of the pending discovery deadlines, and our previous discussions, to the extent that you intend to object to any request or refuse to produce responsive information, we request that you advise us of your objections as soon as possible. We would like to confer with

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Jacqueline Sikora, Esq.
December 31, 2008
Page 2

you regarding these issues before your responses are formally due, so if a motion becomes necessary, it can be fully briefed prior to the close of discovery.

I look forward to working with you to resolve these issues.

Best regards,


Christi R. B. Stover

CRBS/akh

Enclosures

cc (w/encls): Gary Wigal, Esquire
Larry Rector, Esquire

James A. Gianola
Christopher A. Barnum
Gary S. Wigal
Eric H. London*
Brent L. Van Deysen**
Michelle L. Bechtel
David M. Jecklin
Jacqueline L. Sikora
Craig J. Hines
Larry W. Mayfield*



1714 Mileground
Morgantown, WV 26505

Phone 304.291.6300
Fax 304.291.6307
www.gbwl.net

*Also Admitted in PA | **Also Admitted in VA

***Admitted in Maryland and the District of Columbia | +Of Counsel

January 6, 2009

Christi Stover
Stephoe & Johnson
P.O. Box 1616
Morgantown, WV 26508

Re: Osborne v. Asplundh Tree Expert Company
Civil Action No.: 2:07CV7

Dear Christi:

In response to your letter dated December 31, 2008, I disagree with your characterization of our discussions related to your requests for Mr. Osborne's wife and children's medical records. Specifically, at no time did I agree to "voluntarily" produce Mrs. Osborne's medical records. My agreement with you encompassed only the Rite Aid Pharmacy records, and only for a limited time period, i.e. March to June 2008.

If you have any questions, please do not hesitate to contact me.

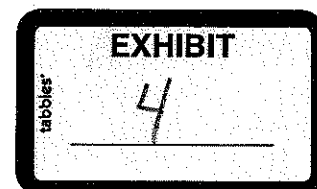
Very Truly Yours,

A handwritten signature in cursive script, appearing to read "Jacqueline L. Sikora".

Jacqueline L. Sikora

JLS/as
Enclosure

cc: Tim Osborne



IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

TIMOTHY E. OSBORNE,

Plaintiff,

v.

Civil Action No. 2:07CV7
(Judge Keeley)

ASPLUNDH TREE EXPERT COMPANY,
a Pennsylvania Corporation

Defendant.

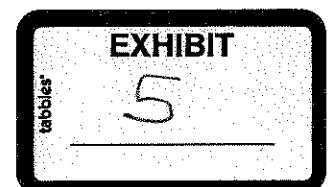
**PLAINTIFF'S RESPONSES TO THE DEFENDANT'S
SECOND SET OF REQUESTS FOR PRODUCTION TO PLAINTIFF**

REQUEST NO. 1: Please produce any and all business and financial records
related to Pro-V Tree from 2000 until the present, including, but not limited to:

- a. articles of organization or other similar documents;
- b. list of all officers;
- c. list of employees;
- d. all bank statements and account records;
- e. customer lists;
- f. work orders;
- g. receipts for work completed;
- h. state and federal tax returns;
- i. business plans;
- j. general ledgers;
- k. records of cash receipts;
- l. records of accounts receivable;
- m. estimates;

GIANOLA,
BARNUM, WIGAL,
& LONDON, L.C.
Attorneys at Law

(304) 291-6300



- n. contracts; and
- o. specifications.

RESPONSE: See the signed "Authorization to Release Financial Records and Information" attached to Mr. Osborne's Responses to the Defendant's Second Set of Interrogatories.

REQUEST NO. 2: Please produce any and all documents related to the rental, lease, or sale of any powered equipment, including, but not limited to "heavy equipment," owned by Pro-V Tree or you from 2000 to the present.

RESPONSE: During the time specified in this request, Mr. Osborne rented his Case 1845 Loader to the Defendant. The Defendant is in possession of all documents responsive to this request. See also, Exhibit 10, totaling 3 pages.

REQUEST NO. 3: Please provide pharmacy records related to prescriptions ordered, filled, or received from March 1, 2006 through June 30, 2006 by you or your family, including your wife and children. Or, in the alternative, please execute the attached releases which are limited in scope to March 1, 2006 through June 30, 2006.

RESPONSE: OBJECTION. This request seeks private, privileged health care information of non-parties which is protected by the Health Insurance Portability and Accountability Act. Further, this request goes beyond the scope of Rule 26 of the Federal Rules of Civil Procedure which allows only the discovery of information which is "not privileged." Without waiving this objection, see redacted copies of Rite Aid Pharmacy records, totaling 5 pages, attached as Exhibit 11.

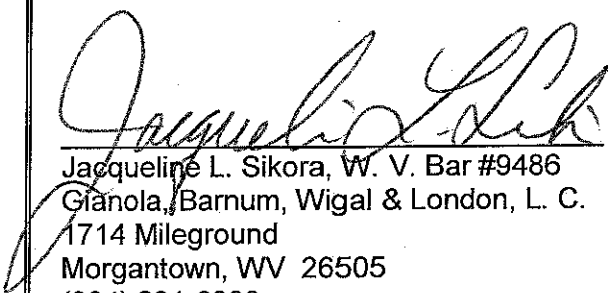
REQUEST NO. 4: Please provide copies of all medical and psychological records of your wife, Tabitha R. Osborne, from March 1, 2006 through June 30, 2006. Or, in the alternative, execute the attached medical records releases. The attached releases are limited in time to March 1, 2006 through June 30, 2006.

RESPONSE: OBJECTION. This request seeks private, privileged health care information of a non-party which is protected by the Health Insurance Portability and Accountability Act. Further, this request goes beyond the scope of Rule 26 of the Federal Rules of Civil Procedure which allows only the discovery of information which is "not privileged." Without waiving this objection Mr. Osborne has attached a privilege log for all documents which may be responsive to this request.

REQUEST NO. 5: Please provide copies of any bills, notices, or statements showing past due debts or payments which you allege are related to your claims in this lawsuit from April 1, 2006 to the present.

RESPONSE: Mr. Osborne currently has no documents responsive to this request, but reserves the right to supplement this request should responsive information be obtained.

TIMOTHY E. OSBORNE,
By Counsel



Jacqueline L. Sikora, W. V. Bar #9486
Gianola, Barnum, Wigal & London, L. C.
1714 Mileground
Morgantown, WV 26505
(304) 291-6300

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TIMOTHY E. OSBORNE,

Plaintiff,

v.

Civil Action No. 2:07CV7

ASPLUNDH TREE EXPERT COMPANY,
a Pennsylvania Corporation

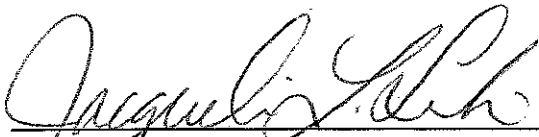
Defendant.

CERTIFICATE OF SERVICE

I hereby certify that on January 30, 2009, I served a true copy of the "Plaintiff's Answers to the Defendant's Second Set of Requests for Production to Plaintiff" by U.S. Mail, First Class postage prepaid, addressed to the following:

John R. Calcott, Esq.
Christi R. Stover, Esq.
United Center, Suite 400
P.O. Box 1616
Morgantown, WV 26507-1616
Counsel for Defendant Asplundh Tree Expert Company

Larry J. Rector, Esq.
Steptoe & Johnson, PLLC
P.O. Box 2190
Clarksburg, WV 26302-8183
Counsel for Defendant Asplundh Tree Expert Company



Jacqueline L. Sikora, W. V. Bar #9486
Gianola, Barnum, Wigal & London, L. C.
1714 Mileground
Morgantown, WV 26505
(304) 291-6300

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

TIMOTHY E. OSBORNE,

Plaintiff,

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Civil Action No. 2:07CV7
(Judge Keeley)

**ASPLUNDH TREE EXPERT COMPANY,
a Pennsylvania Corporation**

Defendant.

PLAINTIFF'S PRIVILEGE LOG

Document Identification	Name of Document	Description of Document	Produced?	Privilege Asserted
Tabatha Osborne-1	Stockett Chart Notes	Chart Notes dated 4/24/06 and 6/30/06 (totaling 4 pages)	No	Privileged Health/Medical Information of Non-Party
Tabatha Osborne-2	Medical Report for Applicants (Stockett)	Medical History dated 6/30/06 (totaling 1 page)	No	Privileged Health/Medical Information of Non-Party
Tabatha Osborne-3	Phone Message	Phone Message dated 3/1/06 (totaling 1 page)	No	Privileged Health/Medical Information of Non-Party



James A. Gianola
Christopher A. Barnum
Gary S. Wigal
Eric H. London*
Michelle L. Bechtel
David M. Jecklin
Jacqueline L. Sikora
Craig J. Hines
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*Also Admitted in PA

+Of Counsel

February 3, 2009

Independence Blue Cross Personal Care
Attention: Barbara Smith/Legal Dept.
1901 Market Street
Philadelphia, PA 19103

Re: Timothy E. Osborne v. Asplundh Tree Expert Company
Civil Action No.: 2:07CV7

To Whom It May Concern:

I represent Timothy and Tabatha Osborne in the above-referenced matter. Yesterday, I received a copy of the attached Subpoena Duces Tecum and Proof of Service served by the Defendant, Asplundh Tree Expert Company, around January 29, 2009, and seeking Tabatha Osborne's medical information including, but not limited to medical records, and bills. Please be advised that Mrs. Osborne objects to the production of her private privileged medical information as protected by the Health Insurance Portability and Accountability Act, and the Federal Rules of Civil Procedure. Further, on my client's behalf, I will be filing a Motion to Quash the subpoena and supporting Memorandum of Law. Given the short-time to respond, please contact me as soon as possible regarding this matter.

Very Truly Yours,

Jacqueline L. Sikora

JLS/as
Enclosure
cc: Tim Osborne

EXHIBIT

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